



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS-SC-16-0041; SC16-929-1]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Proposed Amendment to Marketing Order 929 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule and Referendum Order.

SUMMARY: This rule proposes an amendment to Marketing Order No. 929 (order), which regulates the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The amendment is based on a proposal made by the Cranberry Marketing Committee (Committee), which is responsible for the local administration of the order. The amendment would authorize the Committee to receive and expend voluntary contributions from domestic sources. Contributed funds would be used solely for research and development activities authorized under the order and would be free from any encumbrances as to their usage by the donor.

DATES: The referendum will be conducted from January 23, 2017 through February 13, 2017. The representative period for the

purpose of the referendum is September 1, 2015 through August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Abdullah Orozco, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Abdullah.Orozco@ams.usda.gov or Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order and Agreement No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorizes amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State programs covering cranberries grown in the production area unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15) (A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which

the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the order.

The proposed amendment was unanimously recommended by the Committee following deliberations at a public meeting held August 17-18, 2015.

A proposed rule soliciting comments on the proposed

amendment was issued on July 27, 2016, and published in the Federal Register on August 4, 2016 (81 FR 51383). No comments were received. AMS will conduct a producer referendum to determine support for the proposed amendment. If appropriate, a final rule will then be issued to effectuate the amendment favored by producers in the referendum.

The Committee's proposed amendment would amend the marketing order by authorizing the Committee to receive and expend voluntary contributions from domestic sources for research and development activities.

Proposal - Voluntary Contributions

This proposal would add a new section, § 929.43, Contributions, to the order. If implemented, this section would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and would be free from any restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

Currently, program operations are solely financed through assessments collected from handlers regulated under the order. Sources not subject to the order have expressed an interest in supporting many of the research and development projects

currently funded by the order. However, without the ability to accept financial contributions, the Committee has had to decline these offers. This proposal would provide authority to accept financial contributions. With the potential for additional funding, more research and development projects could be undertaken.

For the reasons stated above, it is proposed that \$ 929.43, Contributions, be added to provide authority to accept voluntary financial contributions.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on Committee data, there are approximately 1,200 cranberry growers in the regulated area and approximately 45

cranberry handlers who are subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), grower prices were \$30.90 per barrel for cranberries during the 2014-15 marketing year. NASS also reported total bearing acres at 40,600 and average yield per acre at 10.3 tons for the 2014-15 marketing year.

Based on the total bearing acres provided by NASS and the approximate number of cranberry growers (1,200 growers), the average acreage per grower is 33.8 acres. Multiplying the average acreage per grower (33.8 acres) by the average yield per acre (10.3 tons) results in an average production of 348.5 tons. To convert the average production from tons to barrels, 348.5 tons is multiplied by 2,000 pounds (one ton equals 2,000 pounds) to equal 696,966.7 pounds and is then divided by 100 (100 pounds equals 1 barrel), resulting in an average production per growers of 6,969.7 barrels.

Multiplying the average production (6,967.7 barrels) by the grower price (\$30.90 per barrel), provided by NASS, equals an average grower revenue of \$215,301.90. Based on this

calculation, the average annual grower revenue for the 2014-15 marketing year was below \$750,000.

Using Committee information and shipment data, the majority of cranberry handlers could also be considered small businesses under SBA's definition. Therefore, the majority of cranberry growers and handlers may be classified as small entities under SBA definitions.

The amendment proposed by the Committee would add a new section, § 929.43, Contributions, to the order. If implemented, this section would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and would be free from any encumbrances or restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

The Committee's proposed amendment was unanimously recommended at a public meeting on August 17-18, 2015.

If the proposal is approved in referendum, there would be no direct financial effect on growers or handlers. This proposal would provide authority to accept financial contributions. With the potential for additional funding, more research and promotional projects could be undertaken.

Therefore, it is anticipated that both small and large producer and handler businesses would benefit from its implementation.

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes it would be beneficial to authorize contributions from domestic sources which would help support research and promotional activities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, "Generic Fruit Crops." No changes in those requirements as a result of this action would be necessary. Should any changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the cranberry production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the August 17-18, 2015, meeting was public, and all entities, both large and small, were encouraged to express their views on this proposal.

A proposed rule concerning this action was published in the Federal Register on August 4, 2016 (81 FR 51383). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and cranberry handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 3, 2016, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the proposed amendments.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Richard Lower at his previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the August 4, 2016, issue of the Federal Register are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered, that this entire rule be published in the **Federal Register.**

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400-407) to determine whether the annexed order amending the order regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York is approved by growers, as defined under the terms of the order, who during the

representative period were engaged in the production of cranberries in the production area. The representative period for the conduct of such referendum is hereby determined to be September 1, 2015 through August 31, 2016.

The agents of the Secretary to conduct such referendum are designated to be Doris Jamieson and Christian D. Nissen, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov. respectively.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Dated: December 14, 2016

Elanor Starmer
Administrator
Agricultural Marketing Service

**Order Amending the Order Regulating the Handling of Cranberries
Grown in the States of Massachusetts, Rhode Island, Connecticut,
New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington,
and Long Island in the State of New York**¹

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington,

¹This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

and Long Island in the State of New York in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries produced in the production area; and

5. All handling of cranberries produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of cranberries grown in the States of

Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on July 27, 2016, and published in the Federal Register (81 FR 51383) on August 4, 2016, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 929 - Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Add § 929.43 to read as follows:

§ 929.43 Contributions.

The Committee may accept voluntary contributions to pay expenses incurred pursuant to § 929.45, Research and development. Such contributions may only be accepted if they

are sourced from domestic contributors and are free from any encumbrances or restrictions on their use by the donor. The Cranberry Marketing Committee shall retain complete control of their use.

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